Petrus ak Belaka v Public Prosecutor

HIGH COURT (BINTULU) — CRIMINAL APPEAL NO 41–01 OF 1998
ELIZABETH CHAPMAN JC
4 APRIL 1998

Criminal Procedure *— Plea of guilty — Absence of counsel — Accused pleaded guilty to charge but was ignorant that conviction would entail forfeiture of his van — Whether duty of the court to explain to accused that a conviction would invoke forfeiture provision*

The appellant was charged under s 33 of the Commercial Vehicle Licensing Board Act 1987 ('the Act'). He was unrepresented and pleaded guilty thereto. The magistrate fined him and ordered his van to be forfeited under s 51 of the Act. Counsel for the appellant asked the court to exercise its powers of revision as the appellant was unaware, when he pleaded guilty to the charge, that an order of forfeiture of the van would be made. It was submitted on the appellant's behalf that when he pleaded guilty to the charge, he had only appreciated the consequences of pleading guilty to the section and nothing else, and that if he had known the van would be forfeited, he would not have pleaded guilty.

Held, setting aside the conviction and sentence:

It is the duty of the court to not only read the charge but explain it to an accused person and where, as in a case of this nature, a conviction under s 33 of the Act would also mean that s 51 had to be invoked, then that should have been explained to the appellant. It was not shown in the record of proceedings that this was done nor could it be implied that the appellant knew that a consequence of pleading guilty would entail forfeiture of the van. Therefore, the conviction and sentence were set aside and a retrial before another magistrate was ordered (see p 896A–D).

[Bahasa Malaysia summary

Perayu dipertuduhkan di bawah s 33 Akta Lembaga Pelesenan Kenderaan Perdagangan 1987 ('Akta tersebut'). Dia tidak diwakili dan telah mengaku bersalah. Majistret mengenakan denda terhadapnya dan memerintahkan supaya van perayu dirampas di bawah s 51 Akta tersebut. Peguam perayu meminta mahkamah melaksanakan kuasa kajian semula kerana perayu tidak mengetahui, apabila dia mengaku bersalah kepada pertuduhan itu, bahawa satu perintah rampasan van itu akan dibuat. Adalah dihujahkan bagi pihak perayu bahawa apabila dia mengaku bersalah kepada pertuduhan itu, dia hanya mengetahui akibat-akibat mengaku bersalah kepada seksyen itu dan tidak ada yang lain, dan sekiranya dia tahu van itu akan dirampas, dia tidak akan mengaku bersalah.

A **Diputuskan**, mengetepikan sabitan dan hukuman:

Adalah menjadi tugas mahkamah bukan hanya untuk membaca pertuduhan tetapi juga untuk menerangkannya kepada tertuduh dan di mana dalam kes seperti ini, di mana sabitan di bawah s 33 Akta tersebut juga bermakna s 51 mesti digunakan, itu sepatutnya diterangkan
B kepada perayu. Tidak ditunjukkan dalam rekod prosiding bahawa ini telah dilakukan. Ia tidak boleh disiratkan bahawa perayu mengetahui akibat mengaku bersalah akan menyebabkan rampasan van. Oleh itu, sabitan dan hukuman diketepikan dan perbicaraan semula di hadapan majistret yang lain diperintahkan (lihat ms 896A–D).]

C

Notes

For cases on plea of guilty, see 5 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 1737–1826.

D

Legislation referred to

Commercial Vehicle Licensing Board Act 1987 ss 33, 51

Musa Donggat (*Tang & Antau*) for the appellant.
Bhupinder Singh (Deputy Public Prosecutor) for the respondent.

E

Cur Adv Vult

Elizabeth Chapman JC: The appellant was charged under s 33 of the Commercial Vehicle Licensing Board Act 1987 and he pleaded guilty
F thereto. The lower court then sentenced him to a fine of RM1,000 in default one month's imprisonment and the van QMA 64 was ordered to be forfeited under s 51 of the said Act. On the hearing of the appeal against forfeiture, learned counsel for the appellant asked the court to exercise its powers of revision instead as the appellant was unaware, when he pleaded
G guilty to the charge, that an order of forfeiture of the van would be made. It was submitted on the appellant's behalf that when he pleaded guilty to the charge under s 33 of the Act, he had only appreciated the consequences of pleading guilty to the said section and nothing else, and that if he had known the van would be forfeited, he would not have pleaded guilty.

On perusal of the record of proceedings, it is noted that the charge was
H read to the appellant and it was recorded that he understood it and 'accused reminded of consequences of his plea and still maintain it'. The appellant had, from the record, also admitted the facts of the case which admittedly mentioned forfeiture. However, it is pertinent to note that when the charge was read, there was no indication to the appellant that
I one of the consequences of pleading guilty would mean that the van would be forfeited. Forfeiture is mandatory, harsh though it may be, and it is precisely because of this that it is necessary, in my view, to explain to the appellant the *full* consequences of a guilty plea, bearing in mind that he

was not legally represented at the material time. It is the duty of the court to not only read the charge but explain it to an accused person and where as in a case of this nature, a conviction under s 33 of the Act would also mean that s 51 had to be invoked, then that should have been explained to the appellant. It is not shown in the record of proceedings that this was done nor can it be implied that the appellant knew that a consequence of pleading guilty would entail forfeiture of the van. Although the facts of the case were read and the appellant had admitted them as correct, it cannot be implied that he was aware that there would be an order of forfeiture nor can one reasonably expect him to know that if he disputed the facts, his guilty plea would be rejected and the case would then go for trial. It would of course, be otherwise if he had been legally represented in the lower court. Further, as the record on p 3 shows, the appellant in his plea in mitigation had urged the court not to forfeit the van, clearly he was unaware of the full consequences of pleading guilty to a charge of this nature. For the reasons stated and in the interest of justice, I would exercise my powers of revision — the conviction and sentence are set aside and a retrial before another magistrate is ordered.

Conviction and sentence set aside.

Reported by Loo Lai Mee

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